Supreme Court, U. S.
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APR 13 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1005

LARRY PRESSLER
Member, United States House
of Representatives,
Appellant,

v.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury;
J. S. KIMMITT,
Secretary of the United States Senate;
KENNETH R. HARDING,
Sergeant-at-Arms of the United States
House of Representatives,
Appellees.

On Appeal From the United States
District Court
For the District of Columbia

APPELLANT'S REPLY TO APPELLEES' MOTIONS TO AFFIRM OR DISMISS

LARRY PRESSLER
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Appellant, Pro Se

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ARGUMENT

Appellees Blumenthal, Kimmitt, and Harding have filed motions for summary affirmance or, in the alternative, for dismissal

of this appeal on grounds of standing, justiciability, and mootness.

1. Appellees' arguments on the merits of appellant's claim under Article I, Section 1, and the ascertainment clause of Article I, Section 6, add nothing to the district court's opinion except bare allegations that the result was clearly correct and that the issue is an unimportant one. However, as the district court itself stated, the issue raised by appellant is unprecedented; and the public events that have transpired since the docketing of appellant's appeal and the amici briefs that have been filed in support of appellant's claim clearly reflect the public importance of the question raised.

2. Appellees' discussions of standing and justiciability are merely recapitulations of the arguments they presented unsuccessfully in district court. Although appellant still claims standing as a citizen and a taxpayer, the district court's conclusion that appellant has standing as a Congressman was clearly correct.

3. The district court was also clearly correct in rejecting appellees' efforts to avoid the merits on justiciability grounds. Appellees' justiciability arguments misconstrue the basic issue involved. Under Article I, Section 1, and the ascertainment clause of Article I, Section 6, the rates

of Congressional pay clearly should be a political question. The ratification debates demonstrate the Framers' intent to make Congress the sole judge of its own salary rates -- subject, however, to the proviso that Congress must affirmatively enact the salary rates "by law" and thereby subject itself to the political restraint of answering to the voters for its salary adjustments. It is Congress' effort to avoid the political question of ascertaining its own salaries that gives rise to appellant's claim. And that claim -- namely, whether the Constitution requires Congress to ascertain its salary rates by affirmative legislative action -- is plainly justiciable.

4. Appellees Kimmitt and Harding have suggested that passage of the so-called Bartlett amendment moots appellant's claim with respect to the Salary Act. Kimmitt Motion at 20-22; Harding Motion at 15-17. Although appellant applauds the passage of the Bartlett amendment, the enactment of that provision in no way moots his claims.

First, appellant seeks to enjoin those portions of all future Congressional salary disbursements that have been "ascertained" under the 1967 Salary Act. The Bartlett amendment is prospective only and does not cure the Constitutional defects in the 1969 and 1977 Salary Act

adjustments which raised Congressional salaries by some $23,200 per annum. The fact that Congress may hereafter vote on future Salary Act adjustments does not moot appellant's claim because appellees continue to make Congressional salary disbursements which include amounts that were not ascertained "by law."

Second, the Bartlett amendment does not affect in any way the automatic cost-of-living adjustments made annually to Congressional salaries under the 1975 Adjustment Act. Although appellees suggest that the statutory standards for determining increases under the Adjustment Act somehow enhance the statute's validity, precisely the reverse is true. The Adjustment Act itself contains no standards whatsoever. Instead, the Adjustment Act simply grants to Congress an automatic increase equal to the overall average of the adjustments made to GS and other statutory salary schedules under the Federal Pay Comparability Act. 2 U.S.C. § 31(2). The standards to which appellees refer are concerned solely with the appropriateness of the levels of the GS and other statutory salary schedules. The adjustments the President orders under the Federal Pay Comparability Act automatically increase Congressional salaries by the same average amount without regard to the propriety of such increases for Congress. Indeed, under the Adjustment

Act, Congress does not normally have the opportunity of disapproval. The adjustments normally take effect automatically without even the opportunity of a legislative veto. Only when the President submits an alternative plan -- i.e., a smaller adjustment than would be required under the Federal Pay Comparability Act standards -- does Congress have a legislative veto. See 5 U.S.C. § 5305(c)(2). And that veto, if exercised, compels the President to make the adjustments in the full amount required by the Federal Pay Comparability Act standards. 5 U.S.C. § 5305(m).

CONCLUSION

For all of the reasons stated above, appellant submits that the question presented in this appeal is substantial and that the Court should note probable jurisdiction and decide the case only upon full briefing and oral argument.

Respectfully submitted,

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Appellant, Pro Se

Dated: April 15, 1977

CERTIFICATE OF SERVICE

I, Larry Pressler, hereby certify that pursuant to Rule 33, paragraphs 1 and 2(a), I have served upon counsel for each appellee and the Solicitor General a copy of Appellant's Reply to Appellees' Motions to Affirm or Dismiss filed this date by depositing three copies in the United States mail, first class postage prepaid, to each of the following on this 15th day of April 1977:

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